

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMY R. ERICKSON,

Plaintiff,

v.

ANTHONY CASTELDA; ANDREW CHASE; and KEVIN W. MORRIS,

Defendants.

NO. 2:22-CV-0033-TOR

ORDER GRANTING DEFENDANT CASTELDA'S MOTION TO DISMISS

BEFORE THE COURT is Defendant Castelda's Motion to Dismiss (ECF No. 15). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein the completed briefing and is fully informed. For the reasons discussed below, Defendant's motion is GRANTED.

BACKGROUND

Plaintiff Amy Erickson, proceeding *pro se*, filed this suit on February 25, 2022, against the above-named parties. ECF No. 1. Defendant Anthony Castelda is an attorney and the personal representative of the Estate of Mark A. Gunderson.

1 *Id.* at 2, ¶ 4. Plaintiff alleges Defendant Castelda (“Defendant”) conspired with
2 other named defendants to deprive her of her late husband’s estate’s assets and to
3 entrap her for unlawful firearms transportation. ECF No. 1. Plaintiff alleges five
4 causes of action against all named defendants: fraud, abuse of process, RICO,
5 violation of the Americans with Disabilities Act, and civil conspiracy. *Id.* at 13–
6 16, ¶¶ 32–40. Plaintiff seeks compensatory and punitive damages. *Id.* at 17.

7 **DISCUSSION**

8 **A. Legal Standard—Motion to Dismiss**

9 A motion to dismiss for failure to state a claim “tests the legal sufficiency”
10 of the plaintiff’s claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To
11 withstand dismissal, a complaint must contain “enough facts to state a claim to
12 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
13 (2007). “A claim has facial plausibility when the plaintiff pleads factual content
14 that allows the court to draw the reasonable inference that the defendant is liable
15 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation
16 omitted). This requires the plaintiff to provide “more than labels and conclusions,
17 and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555. While a
18 plaintiff need not establish a probability of success on the merits, he or she must
19 demonstrate “more than a sheer possibility that a defendant has acted unlawfully.”
20 *Iqbal*, 556 U.S. at 678.

1 When analyzing whether a claim has been stated, the Court may consider the
2 “complaint, materials incorporated into the complaint by reference, and matters of
3 which the court may take judicial notice.” *Metzler Inv. GMBH v. Corinthian*
4 *Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor*
5 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief.”
7 Fed. R. Civ. P. 8(a)(2). A plaintiff’s “allegations of material fact are taken as true
8 and construed in the light most favorable to the plaintiff[,]” however “conclusory
9 allegations of law and unwarranted inferences are insufficient to defeat a motion to
10 dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399,
11 1403 (9th Cir. 1996) (citation and brackets omitted).

12 The Court “does not require detailed factual allegations, but it demands
13 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*,
14 556 U.S. at 662. “To survive a motion to dismiss, a complaint must contain
15 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
16 on its face.’” *Id.* at 678 (citation omitted). A claim may be dismissed only if “it
17 appears beyond doubt that the plaintiff can prove no set of facts in support of his
18 claim which would entitle him to relief.” *Navarro*, 250 F.3d at 732.

19 The Ninth Circuit has repeatedly held that “a district court should grant
20 leave to amend even if no request to amend the pleading was made, unless it

1 determines that the pleading could not possibly be cured by the allegation of other
2 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). The standard for
3 granting leave to amend is generous. The court considers five factors in assessing
4 the propriety of leave to amend—bad faith, undue delay, prejudice to the opposing
5 party, futility of amendment, and whether the plaintiff has previously amended the
6 complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.
7 2011).

8 **B. Americans with Disabilities Act (ADA)**

9 Defendant moves to dismiss Plaintiff’s ADA claim on the grounds that
10 Plaintiff has not sufficiently alleged disability discrimination. ECF No. 15 at 4–5.
11 Plaintiff’s ADA cause of action simply states that Judge Huber, who has since
12 been dismissed from this action, “intends . . . to inflict more stress” upon Plaintiff,
13 and that he “intends” to use another named defendant to violate “whatever court
14 order he thinks will work.” ECF No. 1 at 16, ¶¶ 37–39. The cause of action also
15 simply asserts Plaintiff has PTSD and that PTSD is a disability. *Id.* The factual
16 allegations do not provide any clarification; rather, Plaintiff asserts generally that
17 Defendant tried “to set her up” for criminal charges. *See id.* at 7–10, ¶¶ 17–22.
18 Plaintiff does not connect Defendant’s actions to any discrimination based on her
19 disability.

20 Based on the pleadings, it is difficult to ascertain what ADA cause of action

1 Plaintiff is attempting to advance. She is clearly not alleging discrimination
2 against an employer, thus, her claims do not arise under Title I. However, Plaintiff
3 has not alleged any facts indicating she was denied public services or
4 accommodation under Title II or III, or that she faced retaliation for opposition to
5 unlawful acts under the ADA, in violation of Title V. *See Zimmerman v. Oregon*
6 *Dept. of Justice*, 170 F.3d 1169, 1172 (9th Cir. 1999); *Strojnik v. State Bar of*
7 *Arizona*, 446 F. Supp. 3d 566, 574–75 (D. Ariz. Mar. 17, 2020). It is also unclear
8 whether Plaintiff is a qualified individual under the ADA. As such, Plaintiff has
9 failed to state an ADA claim upon which relief may be granted. The claim is
10 dismissed without leave to amend because amendment would be futile, as
11 Plaintiff's claim would fail as a matter of law based on the facts alleged.

12 **C. Racketeer Influenced and Corrupt Organization Act (RICO)**

13 Defendant moves to dismiss Plaintiff's cause of action alleging RICO
14 violations on the grounds that Plaintiff has not alleged a harm to her business or
15 property and because Plaintiff has not sufficiently established the existence of an
16 enterprise. ECF No. 15 at 5–6. Plaintiff does not allege any facts in the RICO
17 cause of action but simply outlines the elements of a RICO claim. ECF No. 1 at
18 15, ¶ 36.

19 “The elements of a civil Racketeer Influenced and Corrupt Organization Act
20 (“RICO”) claim are as follows: (1) conduct (2) of an enterprise (3) through a

1 pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to
2 plaintiff’s business or property.” *United Bhd. of Carpenters & Joiners of Am. v.*
3 *Bldg. & Const. Trades Dep’t, AFL-CIO*, 770 F.3d 834, 837 (9th Cir. 2014).
4 Defendant argues Plaintiff has failed to allege an injury to her business or property.
5 ECF No. 15 at 5. Even taking all of the factual allegations in the Complaint as
6 true, the Court agrees with Defendant. Plaintiff complains generally of the probate
7 proceedings for her deceased husband’s estate and her perceived mistreatment
8 throughout the proceedings. *See generally*, ECF No. 1. As to Defendant Castelda,
9 Plaintiff merely speculates that he was attempting “to set her up” for criminal
10 charges; Plaintiff does not allege that any harm actually occurred. Plaintiff also
11 fails to identify a business or piece property that could be subject to harm under her
12 RICO claim.

13 Defendants further argue Plaintiff’s RICO claim fails because she has not
14 established an enterprise. ECF No. 15 at 6–7. There are two types of associations
15 that meet the definition of “enterprise” for the purposes of a RICO claim. *Shaw v.*
16 *Nissan North America, Inc.*, 220 F. Supp. 3d 1046, 1053 (C.D. Cal. 2016). The
17 first is comprised of legal entities, such as corporations and partnerships. *Id.* The
18 second is an “associated-in-fact enterprise,” which is defined as “any union or
19 group of individuals associated in fact although not a legal entity.” *Id.* (quoting
20 *United States v. Turkette*, 452 U.S. 576, 581–82 (1981)). The existence of such an

1 enterprise is established with “evidence of an ongoing organization, formal or
2 informal, and by evidence that the various associates function as a continuing
3 unit.” *Id.* (quoting *Boyle v. United States*, 556 U.S. 938, 946 (2009)). “An
4 association-in-fact enterprise must have at least three structural features: a purpose,
5 relationships among those associated within the enterprise, and longevity sufficient
6 to permit these associates to pursue the enterprise’s purpose.” *Id.* at 1053–54.

7 Plaintiff has failed to make a showing of an association-in-fact enterprise.
8 Again, the Complaint alleges Plaintiff’s general grievances with the probate
9 proceedings and her belief that Defendant was attempting to bring criminal charges
10 against her. Plaintiff has not alleged any facts from which the Court could infer an
11 ongoing organization among the defendants with sufficient longevity to sustain a
12 RICO claim. Defendants were simply carrying out their duties as officers of the
13 court.

14 Accordingly, Plaintiff has failed to plead a RICO claim upon which relief
15 may be granted. The claim is dismissed without leave to amend because
16 amendment would be futile, as Plaintiff’s claim would fail as a matter of law.

17 **D. State Law Claims**

18 Plaintiff alleges state law claims for fraud, abuse of process, and civil
19 conspiracy. ECF No. 1 at 13–15, ¶¶ 32–35; 16, ¶ 40. A federal court has
20 supplemental jurisdiction over pendent state law claims to the extent they are “so

1 related to claims in the action within [the court's] original jurisdiction that they
2 form part of the same case or controversy" 28 U.S.C. § 1367(a). "A state law
3 claim is part of the same case or controversy when it shares a 'common nucleus of
4 operative fact' with the federal claims and the state and federal claims would
5 normally be tried together." *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir.
6 2004) (citation omitted). Once the court acquires supplemental jurisdiction over
7 state law claims, § 1367(c) provides that the court may decline to exercise
8 jurisdiction if (1) the claim raises a novel or complex issue of State law, (2) the
9 claim substantially predominates over the claim or claims over which the district
10 court has original jurisdiction, (3) the district court has dismissed all claims over
11 which it has original jurisdiction, or (4) in exceptional circumstances, there are
12 other compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). Indeed,
13 "[i]n the usual case in which all federal-law claims are eliminated before trial, the
14 balance of factors . . . will point toward declining to exercise jurisdiction over the
15 remaining state-law claims." *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350
16 n.7 (1988), superseded on other grounds by statute as stated in *Sanford v.*
17 *MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010); *see also Acri v. Varian*
18 *Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) (en banc).

19 Having dismissed all federal law claims asserted against Defendant
20 Castelda, the Court declines to exercise jurisdiction over the remaining state law

1 claims asserted against him. 28 U.S.C. § 1367(c)(3); *Ove v. Gwinn*, 264 F.3d 817,
2 826 (9th Cir. 2001) (finding that a district court did not abuse its discretion by
3 declining to exercise supplemental jurisdiction over the remaining state law claims
4 when federal claims were dismissed). The parties will not be prejudiced by the
5 Court's decision to decline jurisdiction. Formal discovery in this federal case has
6 not begun, so if Plaintiff chooses to refile her state law claims in state court, she
7 will not be prejudiced. Further, the period of limitation for Plaintiff's remaining
8 state law claims is tolled for thirty days after the claims are dismissed unless
9 Washington law provides for a longer tolling period. *See* 28 U.S.C. § 1367(d).

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

11 1. Defendant Castelda's Motion to Dismiss (ECF No. 15) is **GRANTED**.
12 2. All Plaintiff's federal claims against Defendant Anthony Castelda are
13 **DISMISSED with prejudice and all state claims against him are**
14 **dismissed without prejudice.**

15 3. Defendant Anthony Castelda shall be terminated from the docket.

16 The District Court Executive is directed to enter this Order and furnish
17 copies to the parties.

18 DATED June 28, 2022.



19 A handwritten signature in blue ink that reads "Thomas O. Rice".
20 THOMAS O. RICE
 United States District Judge